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In the Matter of an Arbitration

between

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL UNION No. 1245,**

Complainant,

and

PACIFIC GAS AND ELECTRIC COMPANY,

Respondent,

Involving Arbitration Case No. 35.
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OPINION AND DECISION OF BOARD OF ARBITRATION

SAM KAGEL, Chairman

LAWRENCE H. FOSS, Union Member

J. J. WILDER, Union Member

J. WAYLAND BOMBRIGHT, Employer Member

ARTHUR M. KEKER, Employer Member

San Francisco, California

April 2, 1971

Arbitration Case No. 35

ISSUE:

"Whether the discharge of [redacted] W. [redacted] was in violation of the Labor Agreement dated September 1, 1952, as last amended?"

Mr. W. [redacted] was employed on October 8, 1962, and discharged on May 25, 1970. He was a Control Technician.

LETTER OF DISCHARGE:

The Company's Division Manager sent the following letter to W. [redacted] on May 27, 1970:

"This letter confirms the telephone notification which you received on May 26, 1970, from Mr. R. N. Taylor, Division Personnel Manager, that you were discharged effective 12:00 P.M. that date for insubordination when considered in the light of other acts of misconduct on your part.

"Specifically, your discharge was triggered by your latest act of misconduct, namely your refusal to accept a work assignment to Chemistry from your supervisor in the morning of May 25, 1970.

"On the afternoon of May 15, 1970, while you were on disciplinary layoff without pay for a previous act of insubordination for refusal to perform certain work assignments in Chemistry, on May 11, you informed the Company that you agreed to perform these work assignments without qualification. You were, therefore, reinstated on May 18, 1970. On your return to work that date you were not assigned to Chemistry work, at your request, because you reported that you had an open wound resulting from the surgical removal of a growth from the middle finger of your left hand. You were not assigned to Chemistry work during the week of May 18-22.

"On May 25, your wound was inspected by Mr. E.D. Weeks, Power Plant Engineer, who determined that it had sufficiently healed and could be effectively sealed so that you could be assigned to the Chemistry Section of Unit 3. Since you disputed the assignment your wound was subsequently inspected by Messrs. W. A. Raymond, Assistant Plant Superintendent, G. E. Allen, Radiation Protection Engineer, and H. Reynolds, Claims and Safety Department, all of whom opined that the wound could be sealed and that there would be no hazard for you to work in the Chemistry area. You refused to accept their opinion that the wound could be sealed and stated that you would not work in Chemistry because it was not worth the risk and that the risk was not warranted under the circumstances.

"In the presence of two Shop Stewards, Mr. [redacted] and [redacted], it was explained to you that the assignment was considered safe and why, the reasons for the assignment, and the possible consequence for your action. You continued to refuse the assignment and were suspended from work without pay at \$945, pending review and investigation.

"On May 26, you were called in, with pay for additional investigation from 1000 to 1200, and subsequently notified of the termination of your employment.

"Relative to the reasons for your discharge, as noted above, some weight was given to your past record of misconduct, particularly during the past two weeks. For example, on three previous occasions you were reprimanded in writing, and disciplined for acts of insubordination, noted as follows:

"1. Letter to you from Mr. E. D. Weeks, dated May 8, 1968, re leaving your work area to talk to a shop steward without having requested or received permission from your supervisor to do so.

"2. Letter to you from Mr. E. D. Weeks dated March 9, 1970, re disciplinary lay-off of 9 hours without pay for insubordination.

"3. Letter to you from Mr. D. L. Mix dated May 13, 1970 re disciplinary lay-off of 38 hours without pay for insubordination." (Co. Ex. 13.)

DISCUSSION:

Factual Situation:

As a Control Technician, W. _____, was involved in the sampling of reactor water and effgas for radiation level testing at the Company's Nuclear Power Plant in Humboldt County, California. On May 11, 1970, W. _____ refused to perform the collection and processing of effgas samples, reactor water samples, and other waste samples. This refusal occurred on May 11, 1970, at which time he told his immediate supervisor that he "refused to perform these assignments, because in [his] opinion, they were 'unsafe' and that 'this chronic exposure to radiation was unnecessary, and wrong.'"

Company supervision informed him that it considers such jobs to be safe, but W. _____; refused again to perform the work. W. _____ was subsequently placed on three days' disciplinary suspension subject to the following provision:

"If by the end of this period you agree to perform subject work assignments without qualification you will be reinstated as of 0800, May 18, 1970, and the period of your suspension will be recorded as disciplinary layoff without pay. If you do not so agree by the end of this period you will be considered as discharged as of 1630, May 15, 1970." (Co. Ex. 11.)

W _____ did not file a grievance concerning this suspension and it was not challenged during W _____'s discharge case by the Union. (Union Brief p. 3.)

On his return to work on May 18, W _____ pointed out that he had a growth removed from the end of his finger which had not yet healed. According to the Company, he could have been assigned to Chemistry on his return to work if normal precautions had been taken but that the Company chose not to assign him to such work because it wanted "to avoid another flair up...." (Tr. p. 60.)

A decision was made that when W _____'s wound had healed more completely, he would then be assigned to Chemistry.

On May 25, according to the Company, the wound had had seven days to heal. Additionally, in terms of quarterly exposure to radiation that the Control Technicians had to date, Williams had the least. A decision was made that W _____ would perform Chemistry work after his finger was sealed. The method of sealing was to avoid direct contamination by radioactive water through the use of a "finger-cut" cut from a rubber glove sealed with waterproof tape, and a plastic surgeon's glove sealed at the wrist with waterproof tape topped by a rubber glove. (Co. Ex. 8.)

W _____ then refused to perform the work in question.

Witness' Testimony:

According to W _____, on May 25, his finger was still bandaged. When examined by the Company, W _____ pointed out that the wound was still draining and sore. He squeezed his finger and according to W _____, "a little bulb appeared on it of lymph." (Tr. p. 113.) According to the Company testimony W _____ squeezed hard, but nothing came out of the wound.

W _____ asked for a couple of more days so that the wound could be completely healed which was refused. (Tr.p.113.)

Doctors' Reports:

The next day W _____ reported to a doctor at Company request who found that the wound was practically healed and that in his opinion, although he had no familiarity with radiation and consulted with the radiologist concerning it, the protection contemplated by the Company would be sufficient to provide protection to the wound.

W _____' physician stated that on May 27 he examined the wound, that it was nearly healed, that 5/10th of a millimeter in area was still open which would heal in two days. (Tr.p. 138.)

Witness' Defense:

The Union contends that the Company's ordering W _____ to work in Chemistry was in direct violation of the Company's

own safety rules; that as a matter of fact the wound could not be effectively sealed in any event; that the reasons assigned for the discharge of W. _____, were not as stated in Company Exhibit 13, the Letter of Discharge.

SUMMARY:

Company Safety Rules:

The Company's Radiation Control Standard contains the following:

Standard

"II. Controlled Area Interiors

- • •
- "A. Persons having skin breaks shall not be allowed to enter a Controlled Area without the approval of Radiation Protection and/or their immediate supervisor.

Medical

"II. Controlled Area Interiors

- • •
- "A. Approval for Persons Having Skin Breaks to Perform Radiation Work

- "1. The assignment of persons having skin breaks to work in radioactive materials areas should be avoided if possible.
- "2. Each person shall be responsible for notifying his Supervisor of any skin breaks which he may have before performing radiation work. The supervisor shall be responsible for insuring that any skin breaks are adequately protected before permitting the injured person to enter the Controlled Area. 'Skin Breaks' shall include unhealed wounds, open cracks from chapping, and other injuries such as

lacerations, abrasions, punctures, blisters, or burns.

"3. Persons having skin breaks shall perform radiation work only after the specific prior approval of the individual's supervisor and/or Radiation Protection. The individual's supervisor and/or Radiation Protection shall assure that the degree of protection afforded the skin break is adequate in view of the nature of the work to be performed by the injured person/.

"4. The approval to perform the Radioactive Materials Area work is contingent upon the protection afforded the wound remaining in satisfactory condition. The individual is expected to make every effort to maintain the dressing in place during the course of the work and to leave the same immediately if the degree of protection afforded the wound becomes inadequate." (Op. Ex. 9.)

Conclusions as to Radiation Control Regulations:

The Union relies on paragraph II B(i) on the basis that the assignment of W_____ could have been avoided, in that another Control Technician was available for such work as was admitted by the Company. (Tr. p. 76.)

The Company's reason for the assignment of W_____ was that his radiation exposure was less than that of other personnel and the Company felt, that W_____ wound had healed or if it had not, it could be properly protected. The Company regulations do not prohibit persons with skin breaks working in radioactive areas, but they direct that this be avoided if possible and that in the event an employee is to work in such

an area with a skin break, the individual supervisor or Radiation Protection is to insure that proper radiation protection procedures are followed. In this case, W _____' wound had had seven days to heal, a reasonable determination was made that the wound had healed to the point that either it was no longer a skin break or, if W _____' testimony is credited, it had healed to the point where it could reasonably have been protected from direct contact with contaminated water by a waterproof covering. Accordingly, under the state of the facts presented, the Company by its actions on May 25 directing W _____ to work in Chemistry did not violate the provisions of the safety regulations.

Adequacy of Protection Methods:

W _____ maintains that the protection to be provided was inadequate to protect his finger from radioactive water contamination because the procedures involved require the emerging of his hand in contaminated water. W _____ testified that if a small leak occurred in the glove, this might not be known to him because of the normal sweat of his hand. Water could also come in over the top of the glove. (Tr. p. 122.) In the past, he has cut his gloves on the scotch tape dispenser cutter which he used and glassware breaks during the normal washing procedure. (Tr. pp. 123-124.)

W_____ admitted that he did not cut his glove too often during his work on the job and admitted that if glass breaks, that a skin break could occur because of the broken glass.

The Company stated that the protection that it afforded W_____ was the normal protection afforded for skin breaks in the industry, and at the Company's nuclear plant.

Conclusions Concerning Adequacy of Protection:

The risk that W_____ was concerned with was contact between his wound and water. The protection offered by the Company consisted of three layers of waterproofing, two which were sealed. W_____ admits that he is required to be careful in terms of the work that he performs. Under the circumstances, the protection that the Company afforded W_____ seems adequate to have protected him from contact with water. As the Company points out, in the event that the three layers protection were cut, there would also be a probability that an independent cut or break would occur in the skin because of the cause of the cutting of the waterproof protection. Such would be an independent source of contamination which is part of the normal risks inherent in the Control Technician job. Therefore, as a matter of fact, it is found that the protection offered W_____ was adequate in view of the nature of the work he was to perform. (See Reg. II B(3), Co. Ex. 9.)

Reasons for Discharge:

The Company raised the issue that there was a common plan and design on the part of W_____ and R_____ (see Arbitration Case 36) and others who continually raised questions concerning the adequacy and efficacy of the Company's safety program.

At the Company's safety meeting of May 20, 1970, W_____ raised questions concerning the too high setting of the background reading of the hand and foot counter for accurate monitoring of persons leaving the control area as well as questions concerning the maintenance of the high level solid waste storage vault in terms of possibility of spreading undetected contamination. (Co. Ex. 1.) Other matters raised by W_____ include that personnel were not receiving instruction in radiation monitoring. (Co. Ex. 2.) According to the Union, these questions were questions which caused embarrassment to the Company and that this was the real reason why W_____ was discharged, and that the incident on May 25 provided a convenient way for the Company to rid itself of W_____.

The Company states that W_____ participation in the safety meeting of May 20 received but very minor weight, if any, in the decision to discharge, and the primary reasons for W_____ discharge were stated in the Letter of Discharge that was sent to W_____. (Tr. p. 101.)

Conclusions Concerning Basis for Discharge:

In summary there is no question that the record indicates that W _____ and, as will be stated later, R _____, decided to bring radiation safety questions into the open at safety meetings. In the past, the record shows the Company has adopted safety suggestions of its employees including such questions in the radiation field. What the record does disclose, insofar as W _____ is concerned, is that the Company's motivation for discharge was as stated in the Letter of Discharge to W _____ and the additional consideration that it desired to check on his good faith statement that he had returned to work after the May 11 suspension without qualification. (Tr.p.107.) Whatever W _____' motivation for his actions on May 11 and May 23, the record does not sustain his claims that the Company was motivated and had acted against him because of the questions raised by him at the May 20 safety meeting.

Mitigation:

The record does show that W _____ raised the question of safety on May 23, and at that time the Company took justifiable action concerning the protection of W _____' skin break. The Company was entitled to order him to work in Chemistry based on the amount of radiation exposure that all of the Control Technicians had had.

However, W. _____ did make the statement that if a couple of more days had passed he would have unqualifiedly returned to work in Chemistry. As the above shows, W. _____ was not entitled to ask for those "couple of more days." Nonetheless, the record does show that W. _____ was employed for eight years, and that except for the incidents occurring in May 1970 and a relatively minor infraction on May 8, 1968, he apparently had a good work record. W. _____ has been off work since May 1970. Reducing his discharge to a suspension without back pay provides ample and significant discipline for his refusal to perform work on May 25.

DECISION IN ARBITRATION CASE NO. 35:

1. W. _____, will be returned to work forthwith in line with his seniority.
2. He shall receive no back pay.

BOARD OF ARBITRATION:

	<u>Sam Kagel</u> Chairman	
<u>John J. Wilder</u> Union Member	<u>Concur</u> Concur/Dissent	<u>3-30-71</u> Date
<u>Lawrence N. Foss</u> Union Member	<u>Concur</u> Concur/Dissent	<u>3-30-71</u> Date
<u>A. W. Bright</u> Employer Member	<u>Dissent</u> Concur/Dissent	<u>3/30/71</u> Date
<u>C. M. Kizer</u> Employer Member	<u>Dissent</u> Concur/Dissent	<u>3/30/71</u> Date